IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-11-2006

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

S.A.No.1071 of 2006

AND

M.P.No.1 of 2006

V.Chandrasekaran .. Appellant/Defendant.

vs

1.Perumal
2.Vijay Shilender
3.Ananda Velankar
4.Prabakar .. Respondents/Plaintiff.

Second appeal preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree in A.S.No.33 of 2005 dated 19.1.2006 on the file of the Principal District Judge, Villupuram, confirming the judgment and decree in O.S.No.179 of 2002 dated 31.12.2004 on the file of the I Additional Subordinate Judge, Villupuram.

For Appellant : Mr.Parthasarathy
Senior Counsel
for Mr.S.Srinath

For Respondents : Mr.T.Dhanyakumar
for R1 (Caveator)

JUDGMENT

The defendant who failed in both the Courts in his defence plea in a suit for specific performance by way of re-conveyance of an immovable property, has brought forth this second appeal.

2.It was a suit filed by the respondents/plaintiffs seeking re-conveyance of an immovable property in respect of which originally a sale deed was executed by all in favour of the appellant/defendant for a consideration of Rs.1,74,750/-. Apart from that, it is also admitted that there was an agreement entered into between the parties as per which the defendant on getting the amount on or before 1.7.2002, should re-convey the property by way of a regular sale deed.

3.The plaintiffs filed the suit alleging that all along they were ready and willing to make the payment; but, there was an evasion on the part of the defendant; that specific demands were made on 20.5.2002 and 26.6.2002; that even then, the defendant did not receive the amount and

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execute the sale deed, which compelled the plaintiffs to seek for re-conveyance by way of a suit for specific performance.

4.What was all contended by the defendant's side before the Courts below and equally here also is that it is true that originally there was a sale transaction on 2.7.1997; that it was also agreed between the parties that the entire amount should be paid on or before 1.7.2002; that by that, the defendant also agreed to re-convey the property; that he also received Rs.100/- by way of advance; but, the plaintiffs were never ready and willing; that in fact, they had no funds for making the sale consideration of Rs.1,74,750/-; that it is alleged that there were specific demands made on 20.5.2002 and 26.6.2002; but, they were all nothing but cooked up stories; that apart from that, before the trial Court, no evidence either oral or documentary in that regard, was also adduced by the plaintiffs; that apart from that, when the suit was filed, they made a payment of Rs.100/- only; that lot of amount was to be paid by way of Court Fee; that they have paid the Court Fee subsequently; that apart from that, Lodgment Schedule was also taken before the Court on 27.6.2002; that they have deposited the amount only on 5.8.2002; that both these facts would be indicative of the fact that they have no sufficient funds to make the payment to the defendant; that both the Courts have not gone into these aspects, but decreed the suit, and hence, it is a fit case where this appeal has got to be heard.

5.The Court heard the learned Counsel for the first respondent/Caveator also and went through the entire materials available.

6.Admittedly, the defendant purchased the property from the plaintiffs by way of a sale deed on 2.7.1997 for a sum of Rs.1,74,750/-, and there was an agreement for re-conveyance that the defendant should execute the re-conveyance deed on receipt of the said amount on or before 1.7.2002. It is also an admitted position that the defendant received an advance of Rs.100/-. According to the first plaintiff, examined as P.W.1, he was making the payment all along, and apart from that, specific demands were made on 20.5.2002 and 26.6.2002. Now, at this juncture, the first contention put forth by the appellant's side that there is no specific demand, and there is no evidence available in that regard has got to be discountenanced for the simple reason that it is an admitted position that both the first plaintiff and the defendant were friends and were also residing in the adjacent houses. Under the circumstances, there is no question of putting forth any further evidence.

7.Apart from the above, the contention put forth by the appellant's side that no notice was served upon the defendant by the plaintiffs before the institution of the suit cannot be a reason to nonsuit the plaintiffs. In the instant case, the last date for payment of the entire sum by the plaintiffs to the defendant was fixed as 1.7.2002; but, the suit was filed on 27.6.2002 which is four days prior to that. Thus, the suit was filed in time. That apart, in the instant case, the contention that only Rs.100/- was paid at the first instance and the remaining amount has been deposited subsequently cannot be a reason because an application was filed for payment of deficit Court Fee before the lower Court, and the lower Court has also found justifiable reasons to permit the plaintiffs to make the deficit Court Fee, and accordingly, it has been done. Besides that, in

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the instant case, the Lodgment Schedule was filed on 27.6.2002, and the deposit was made in the month of August 2006 i.e., within a month or two, and the same cannot be a reason for denying the relief. Further, it is an admitted position that the entire sum of Rs.1,74,650/- after deducting Rs.100/- paid as advance, was deposited by the plaintiffs before the lower Court in the month of August 2002. Both the Courts below have marshalled the evidence proper and have taken a correct view. This Court is unable to find any reason to disturb the concurrent finding recorded by the Courts below. Apart from that, this Court is unable to notice any question of law, much less substantial question of law. Hence, this second appeal is liable to be dismissed and accordingly, dismissed at the admission stage itself. No costs. Consequently, connected MP is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To:
1.The Principal District Judge
Villupuram
2.The I Additional Subordinate Judge
Villupuram
+ 1 CC To Mr. S.Srinath, Advocate SR NO. 58253

+ 3 CCs To Mr.T.Dhanyakumar, Advocate SR NO. 57905

nsv/

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Gp/20.12.

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